



**MINUTES OF MEETING OF THE CITY COUNCIL
OF THE CITY OF HAYWARD
City Council Chambers
777 B Street, Hayward, CA 94541
Tuesday, July 12, 2005, 8:00 p.m.**

MEETING

The Meeting of the City Council was called to order by Mayor Pro Tempore Jimenez at 8:00 p.m., followed by the Pledge of Allegiance led by Council Member Ward.

ROLL CALL

Present: COUNCIL MEMBERS Quirk, Halliday, Ward, Dowling, Henson
MAYOR PRO TEMPORE Jimenez
Absent: MAYOR Cooper

PRESENTATIONS: Pride in Hayward Award

Mayor Pro Tempore Jimenez presented the July Pride in Hayward Award to the following residents of the Southgate Neighborhood: Laura McCarthy, David and Dorothy Petersen, John and Isabelle Bromstead, and Jai and Chandra Prasad. He commended and thanked each for taking pride in their homes and adding to the beauty of the City of Hayward.

PUBLIC COMMENTS

Francisco Abrantes, a 30-year resident, commented on property measurements related to property at 22887 Grand Avenue.

CONSENT

1. Approval of the Minutes of the City Council Meeting of July 5, 2005.

It was moved by Council Member Dowling, seconded by Council Member Henson, and carried with Mayor Cooper absent, to approve the minutes of the City Council Meeting of July 5, 2005 with revisions to expand the comments made by Al Mendall. Council Member Henson noted that even though he was absent from this meeting, he would be voting on this item.

HEARINGS

2. Appeal of Planning Commission Approval of Variance No. PL-2005-0124 – Ryan Akin (Applicant/Owner) - Request to Allow a Bedroom Addition with a One-Car Carport and an Uncovered Parking Space Where a Two-Car Garage is Required - The Property Is Located at 1090 Highland Boulevard, in a Single-Family Residential (RS) Zoning District

Staff report submitted by Associate Planner Emura, dated July 12, 2005, was filed.

Principal Planner Patenaude made the report and described the property as a single-family house with a one-car garage at the front of the property. This driveway extends across the property into the public right-of-way. The reason it is before the Council is that the applicant wishes to make an addition to his home. In order for the applicant to add a bedroom, he must comply with the City's parking regulations, which requires a two-car garage. The applicant requested that the current parking arrangement remain and requested this variance. At the Planning Commission hearing, staff recommended an exception that allowed him to construct a carport for two cars on the owner's property, not in the right-of-way. The Planning Commission action was to allow uncovered spaces in lieu of the two-car garage with a decorative paving in the driveway on the property, noting that a structured carport would detract from hillside views. He depicted the existing retaining wall on the site plan. He discussed the requirement to construct a new retaining wall, which is the reason for the appeal. Lastly, he provided the staff recommendation to uphold the Planning Commission's decision. He responded to Council questions regarding the right-of-way, potential vacations, and the carport location.

Council Member Quirk reported that he visited the site. He commented that the City's fifteen feet of right-of-way is not improved and rather unsightly. He asked how likely the City would expand the current 40 foot road width to 60 feet. Acting Public Works Director Bauman responded that the real intent was to establish the 60 foot width, but the tract was developed at the 40 foot width due to the downhill sloping side and the need to access properties. He did not see the likelihood of the City using it, but it would not be appropriate at this time to vacate it for the entire street.

Council Member Dowling asked for clarification of the current parking configuration and whether it was in compliance with current City parking regulations. He discussed the staff recommendation that includes decorative paving and an upgrade to the landscaping.

Council Member Ward discussed the issue of consistency when the topography suggests an allowance from regulations. He asked for any past similar situations. Staff responded that there would be a significant undertaking if the right-of-way would be vacated on that street. Options were explored, but not accepted and the applicant desired to maintain the existing carport.

In response to Council Member Halliday's question regarding the parking space needs in relation to the encroachments, Principal Planner Patenaude responded that the carport and the two required parking spaces should be five feet behind the property. Currently the driveway is encroaching into the right-of-way. She asked what the cost of the bond for the property owner if that was an option. It was noted that there are several instruments, including an agreement between the applicant and the City that could be utilized. Council Member Halliday indicated that the applicant had the concern, not just the monetary considerations, but some aesthetic issues related to the location of the retaining wall. She felt that due to the unusual configuration of the property, certain considerations could be made.

Principal Planner Patenaude reported that there would be approximately ten feet from the retaining wall and the view from any window would be looking at the slope. She also asked if there are issues with parking on that street. Staff noted that parking is restricted to one side of the street.

Council Member Henson asked about neighboring conditions and if similar exceptions have been provided. Principal Planner Patenaude enumerated several instances where similar variances in the



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neighborhood were permitted to accommodate property owners, including garage conversions. A full garage is not being required, but the property owner must provide for two parking spaces within the property.

Mayor Pro Tempore Jimenez opened the public hearing at 8:36 p.m.

Ryan Atkin, owner of the property on Highland Boulevard, showed photos of a number of houses in that neighborhood that depict what he is asking for on his property. He was not aware of the requirement for parking when he decided to add a bedroom. He did not personally see a parking problem on that street. In response to Council Member Dowling's question, the property owner stated that he desires to utilize what is currently there. He noted that he purchased the house in its current condition eighteen months ago. He reported his intentions for the property, but did not want to build a garage nor a retaining wall. Mr. Atkin stated that one must go down two flights of stairs to access his property. With the requirement that retaining walls are limited to six feet, he reported that he would need to build two retaining walls and that one would be situated directly in front of a large bay window of his home. Building to the right with the existing carport would still encroach on the public right-of-way and backing out into the street will continue.

Council Member Dowling surmised to the applicant that he is basically asking if he could park in his front yard, when that is not allowed in the rest of the City. Mr. Atkin stated that this is the case in his neighborhood and he was hoping to eliminate his current egress that is angled, requires some maneuverings to pull in and out, and would like to be able to back out directly into the street. Mr. Atkin re-stated that he was willing to construct a carport, open to any ideas, but not open to building another retaining wall closer to his house.

City Manager Armas suggested that it may be possible to work with the applicant to create a more attractive carport with some modifications and consider granting an encroachment permit that requires such removal at a future date if necessary to widen the street.

Mayor Pro Tempore Jimenez reiterated the points to be considered and expressed his concerns against backing out onto Highland.

Mr. Atkin felt that if granted the variance, the visibility would be easier when backing out.

Council Member Ward recommended that this item be continued so that staff could work with the applicant to bring this back as there are a number of possibilities that might occur and taking action now might implicate or set a precedent.

Council Member Halliday agreed and stated that there aren't many options. This is a uniquely configured property, the street is unique and a challenging situation that could set precedent. Aesthetics matter and she was not in favor of placing a retaining wall in front of a window that could devalue the home. She felt that this was not exactly encroaching on an area that the City

intends to use. It would take substantial staff time to consider other resources, but perhaps in the future deed over to the property owners.

Council Member Dowling agreed with continuing the matter, but would like to see a covered carport. Mr. Atkin commented against it and stated that his neighbors spoke against it as it would block views for them.

Council Member Henson agreed that City Manager Armas' proposal may be a good one and suggested a careful review of its workability. He suggested looking at all alternatives.

Mr. Atkin presented another scenario to pave the entire front and discussed his views on what the city code prohibits.

Mayor Pro Tempore Jimenez closed the public hearing at 8:51 p.m.

Council Member Quirk annotated that he has a similar situation where he resides. He considered the City's fifteen feet of right-of-way as a no man's land and property owners are not likely to improve it as it might be taken by the City. He noted that the house is attractive, in spite of the unsightliness of the right-of-way. He noted that the problem is that the City could take it anytime. He realized that City time is not available to make adjustments. Since it might occur in the future, Council can recognize the property owner's ability to use the property including parking in front of the house. He was predisposed with the City Manager's suggestion that is listed as Number 1 in the report. He asked staff if details are well-defined.

City Manager Armas reiterated Council Member Ward's recommendation to take additional time to work with the applicant and determine the best effort. In response to Council Member Ward's question related to the calendar, City Manager Armas suggested the meeting of July 26.

Council Member Dowling suggested staff consider this issue in the future.

It was moved by Council Member Ward, seconded by Council Member Dowling, and carried with Mayor Cooper absent, to continue this item until July 26.

3. Use Permit No. PL-2005-0123 – Ken Johnson (Applicant)/John Kim (Owner) – Request to Operate a Payday Loan Facility at 24457 Mission Boulevard

Staff report submitted by Principal Planner Patenaude, dated July 12, 2005, was filed.

Principal Planner Patenaude made the report, noting that the Planning Commission approved the use permit to operate the payday loan. He noted that payday loan operations are evenly distributed throughout the City. He depicted the major issues as the illegal pole sign, illegal 'land to sea' container, shrubs that need to be improved and trash receptacles that are not enclosed. The parking lot is opened to single-family homes and provides no privacy. He reported that the Planning Commission approved the use permit to operate the business, but since the applicant has no direct control over the property deficiencies added the condition that the property owner comply with the property maintenance requirements within one year.



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Council Member Henson reported that he called this use permit because he had previously worked with former Assembly Member Corbett on bill AB 425 that would limit the amounts that payday loan facilities could charge in compounded interest. He argued that such facilities are scattered throughout the City. He felt that this business would be just a few blocks from another payday loan facility. He commented that even though other financial services would be offered, this is still an operation under the primary use of payday loans. He commented against the property owner requirements being delayed and asked for reasons for the extenuating circumstances for this waiver. He felt that the property owners should comply with the required improvements prior to the tenant commencing his operation. Principal Planner Patenaude stated that the staff recommendation was to have the property owner make the improvements prior to the approval of the use permit.

Council Member Halliday asked if the minor deficiencies were addressed. Staff was not aware. She asked if the wall was a condition and staff stated that it wasn't, but substantial landscaping was included in the conditions, to screen the back yards of the residences. This was the recommendation as the parking lot is of a higher elevation than the back yards and could provide a landscape buffer. Council Member Halliday asked what recourse the City could take if the conditions were not met. Principal Planner Patenaude stated that the use permit revocation process could be implemented if the Council upholds the Planning Commission decision and there is no compliance.

Council Member Quirk referred to the letter in report from property owner Patricia Kim, Exhibit E-14, who agreed to make the changes except for two, which includes the condition to cover the existing trash enclosure. He asked about the forthcoming adjacent construction that is referred in the letter and asked if it was really a problem. Principal Planner Patenaude responded that there is a building permit application and a plan check, but no building permit has been issued; staff does not believe that it would interfere with the construction of the trash enclosure and continues to recommend that the property owner comply with the imposed conditions prior to the commencement of the business.

Council Member Dowling asked about the age of the building and commented on its negative appearance, lack of improvement and poor maintenance. He also commented on the letter from Ms. Kim and asked whether the façade project was complete. Staff noted that this has not been completed. In regards to his question on signage, Principal Planner Patenaude noted that it would need to be creative in signage, as there is no wall space on this building.

Council Member Ward reasoned that the building should have a barrier between the residences and the business. He referred to a letter from an adjacent neighbor requesting a separation wall be installed. He suggested a short wall be constructed as a barrier and landscaping tends to deteriorate in time.

Mayor Pro Tempore Jimenez opened the public hearing at 9:17 p.m.

Ken Johnson, business owner, stated that one focus of his business is the payday loan business, but it would not be his primary focus. It was his desire to open a business center for those who are underserved in this area. He is a registered stock broker and a past manager of Wells Fargo Bank and World Savings. He showed the interior of the financial center and noted other services that will be offered. In response to Council questions, he noted that his rate would be 15% as governed by the State of California for a ten-day loan.

Council Member Dowling asked what the posted sign would state. Mr. Johnson stated that the name of his business is the Monterey Financial Center and that the payday loan would be listed among the other services to be offered. Council Member Dowling stated that it seemed to be an upscale payday loan business. He thought this was a noble idea but surmised that people who depended on this type of loan wouldn't have money to invest. Mr. Johnson was of the persuasion that if one could save \$50 per month in a mutual fund account, it could be good investment for the long term.

Council Member Henson thanked him for the explanation, but was still apprehensive. He felt that the emphasis would still be on a payday loan company. He reported that he noticed the current sign on the window as he visited the site and that confirmed the intention of the business. He suggested Mr. Johnson review the Alameda County Social Services data related to the feedback that customers were charged up to 500% in fees and charges for a transaction. He commended Mr. Johnson for his initial effort to provide other financial services and asked him what percentage of his business did he anticipate be derived from payday loans. Mr. Johnson responded that at first the percentage could be 50 to 60 percent, but as he continues to offer other financial assistance, it could decrease to about 30 percent. Customers are using this to avoid late fees and finance charges. He felt that this is a social concern, not just a financial matter.

Council Member Ward reiterated that Council's main focus at this hearing would be the on the land use. He asked the building owner manager, Mr. Kim, to respond to questions. Council Member Ward conveyed his concerns and asked the building manager whether he could comply with the resolving the conditions of approval prior to the opening of the business.

Mr. Kim explained that the he has spent over \$2,000 to remove the bamboo, which is difficult to eradicate. The chemical that was applied takes about ten months to be effective. The Kim family has owned the building for over four years and is obligated to comply by Council direction. He displayed a photo of his intended improvement and expressed his concern of the definition for Spanish style. It was noted that no formal plan has been submitted. Staff was also requesting compliance prior to the time of occupancy.

Council Member Dowling commented on the content of the letter from Ms. Kim relating to problems with renting the property. He reasoned that tenant occupancy issues are basically due to the condition of the building which is unsightly and without architecture.

Mayor Pro Tempore Jimenez closed the public hearing at 9:43 p.m.

Council Member Henson moved to disallow on the basis that no improvements have been made to respond to building issues even though Mr. Johnson may have made a compelling point. He agreed



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that the other uses are essential and needed. He did not get a sense that the issue of compliance has begun. Staff has not received any feedback regarding any improvements and any self-imposed timelines stated in the letter have not been addressed.

Council Member Ward seconded Council Member Henson's motion.

Council Member Dowling also felt that this business is a noble cause, but in reality a payday industry. He appreciated Council concerns and recommended a friendly amendment. He suggested Council require as staff recommended that all conditions be met prior to the opening of the business and that the fence be an actual fence rather than landscaping in light of the maintenance issues. Council Member Dowling challenged the Kim family prove him wrong.

Council Member Henson decided that he would rather revise his motion to conform to Council Member Dowling's friendly amendment.

Council Member Halliday announced that she would oppose the motion. She offered a substitute motion, seconded by Council Member Quirk for the sake of discussion. She moved to adopt the draft resolution as provided in the staff report, including the CEQA requirements. Her argument was that this is an opportunity to get some improvement on the property. The Kim Family can rent to get monies to improve the building rather than consider something else. She admitted that it is a marginal project, but urged an act of faith. She suggested placing deadlines to meet the conditions and commented that Council risks not having anything.

Council Member Ward stated that he would be opposing the substitute motion. He did not feel that this would be an incentive for the family to make the necessary improvements. The fact is that the new business would not be an incentive for the property owner to improve his property. By making the improvements first would increase the value of the property and the potential for additional tenants. He also urged staff to utilize community preservation in the adjacent neighborhood. He spoke with Mr. Johnson and agreed that Wells Fargo Bank offers similar service but defines it as cash advances rather than calling it a payday loan facility. He emphasized that this situation is about land use.

Council Member Dowling announced that he would be opposing the motion. He agreed with his colleagues' interest to improve this building and noted that such improvements would benefit a major arterial in the City. He also stressed the importance of upfront improvements.

Council Member Henson reiterated his concern that there are no plans for upfront improvements. He urged the business owner to support the improvements and noted that it is incumbent upon the property owners to get the improvements made. He encouraged the Kim family to work with staff to comply.

Council Member Quirk also stated that he seconded the motion for the sake of discussion, but shared his concurrence with the first motion. He would be voting against the substitute motion.

As a result of the above comments, Council Member Halliday withdrew her substitute motion.

It was moved by Council Member Henson, seconded by Council Member Ward, and carried, by the following roll call vote to approve the Use Permit Application with the Conditions for improvements to the building as staff previously recommended with the requirement that a fence be installed at the western property line prior to authorizing the Conditional Use Permit:

Resolution 05-093, "Resolution Finding the Project Categorically Exempt from the California Environmental Quality Act and Not Upholding the Planning Commission's Decision, Approving the Staff Recommendation for Building Improvements prior to the Conditional Approval of Use Permit Application PL-2005-0123"

AYES: Council Members Quirk, Halliday, Ward, Dowling,
Henson

MAYOR PRO TEMPORE Jimenez

NOES: Council Member Halliday

ABSENT: MAYOR Cooper

ABSTAINED: None

COUNCIL REPORTS

There were no Council items.

ADJOURNMENT

Mayor Pro Tempore Jimenez adjourned the meeting at 10:00 p.m.

APPROVED:

Matt Jimenez, Mayor Pro Tempore, City of Hayward

ATTEST:

Angelina Reyes, City Clerk, City of Hayward